



J. TYLER McCAULEY
AUDITOR-CONTROLLER

**COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER**

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March 17, 2006

Ms. Paula Highashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Dear Ms. Highashi:

**Los Angeles County's Review - Commission Staff Analysis
Peace Officers Procedural Bill of Right's Decision Reconsideration
Government Code Section 3313, as added by Statutes 2005, Chapter 72**

We submit our review of the Commission staff analysis of the Peace Officers Procedural Bill of Right's program reconsideration, now pending before the Commission.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

John Naimo
FOR

J. Tyler McCauley
Auditor-Controller

JTM:CY:LK
Enclosures

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The County of Los Angeles [County] concurs with the Commission on State Mandates [Commission] staff's general finding, stated on page 2 of their "Reconsideration of Prior Statement of Decision", that:

"... the San Diego Unified School Dist. Case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XII B, section 6 of the California Constitution for counties, cities, school districts, and, special districts identified in Government Code section 3301 that employ peace officers."

The County also concurs with Commission staff's affirmation of its prior [November 30, 1999] finding that investigation services are reimbursable. In this regard, Commission's finding, on page 13 of its [November 30, 1999] Statement of Decision, remains undisturbed:

"Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes "costs mandated by the state" under Government Code section 17514." [Emphasis added.]

Commission staff explain further in the current analysis, on page 16, that:

"Thus, in order to maintain the public's confidence, "a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings." (Emphasis added.)"

Reimbursable Investigations

The County, on November 16, 2005, submitted sworn evidence that investigations encompassed by the test claim legislation are reimbursable. As noted in the declaration of Captain Karen Mannis, of the Internal Affairs Bureau of the Los Angeles County Sheriff's Department, attached to the County's POBOR's Reconsideration filing of November 16, 2005, "... investigating peace officer misconduct is a required, necessary and essential duty".

In this regard, the California Supreme Court in Pasadena Police Officers Association et al., v. City of Pasadena et al, (51 Cal.3d 564, *567) held that:

"To keep the peace and enforce the law, a police department needs the confidence and cooperation of the community it serves. Even if not criminal in nature, acts of a police officer that tend to impair the public's trust in its police department can be harmful to the department's efficiency and morale. Thus, when allegations of officer misconduct are raised, it is essential that the department conduct a prompt, thorough, and fair investigation. Nothing can more swiftly destroy the community's confidence in its police force than its perception that concerns raised about an officer's honesty or integrity will go unheeded or will lead only to a superficial investigation. [Emphasis added.]

Also, Captain Mannis indicates that investigating peace officer misconduct is a required, not an optional, duty when a complaint has been filed pursuant to Penal Code Section 832.5(a)(1):

"(a)(1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public." [Emphasis added.]

Accordingly, [the above] investigation costs are reimbursable.

Due Process

Due process activities are reimbursable for cases involving a permanent employee who is transferred for the purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in

disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. As noted by Commission staff, on page 27 of their POBOR's reconsideration analysis:

“Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.”

Nevertheless, Commission staff find that the [above] new due process costs are not reimbursable. We disagree. Such costs are clearly reimbursable.

The California Supreme Court decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 held that “full reimbursement” of new due process costs are required.

The San Diego Court found that “full reimbursement” of all of the costs of mandatory procedural duties, not “triggered by federal law”, is required under section 6, article XIII B of the California Constitution. Here, the Supreme Court, on pages 881-882, concluded:

“The judgment of the Court of Appeal is affirmed insofar as it provides for full reimbursement of all costs related to hearings triggered by the mandatory expulsion provision of Education Code section 48915. “ [Emphasis added.]

The San Diego decision is applicable here as new POBOR's due process duties are not “triggered by federal law” but, rather triggered by State mandated events when such events occur¹.

¹ In this regard, see page 2 herein, where Captain Mannis indicates that investigating peace officer misconduct is a required, not an optional, duty when a complaint has been filed pursuant to Penal Code Section 832.5(a)(1):

“(a)(1) Each department or agency in this state that employs peace officers shall establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies, and shall make a written description of the procedure available to the public.” [Emphasis added.]



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Declaration of Leonard Kaye

Leonard Kaye makes the following declaration and statement under oath:

I, Leonard Kaye, SB90 Coordinator, in and for the County of Los Angeles, am responsible for filing test claims, reviews of State agency comments, Commission staff analyses, reconsiderations and for proposing, or commenting on, parameters and guidelines (Ps&Gs) and amendments thereto, and for filing incorrect reduction claims, all for the complete and timely recovery of costs mandated by the State. Specifically, I have prepared the subject reconsideration review.

Specifically, I declare that I have examined the County's State mandated duties and resulting costs, in implementing the subject law, and find that such costs as set forth in the attached document, are, in my opinion, reimbursable "costs mandated by the State", as defined in Government Code section 17514:

" ' Costs mandated by the State' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

I am personally conversant with the foregoing facts and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are therein stated as information or belief, and as to those matters I believe them to be true.

3/17/06, Los Angeles, CA
Date and Place

Leonard Kaye
Signature



J. TYLER McCAULEY
AUDITOR-CONTROLLER

COUNTY OF LOS ANGELES DEPARTMENT OF AUDITOR-CONTROLLER

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DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Hasmik Yaghobyan states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 17 day of March, 2006, I served the attached:

Documents: Los Angeles County's Review of Commission Staff Analysis, Peace Officers Procedural Bill of Right's Decision Reconsideration, Government Code Section 3313, as added by Statutes 2005, Chapter 72, including a *1 page letter of J. Tyler McCauley dated 3/17/06, a 3 page narrative, and a 1 page declaration of Leonard Kaye, now pending before the Commission on State Mandates.*

[X] By transmitting to Commission's e-mail csminfo@csm.ca.gov a PDF copy of the above documents. By mailing original signed above documents to Commission's address: Ms. Paula Higashi, Executive Director; Commission on State Mandates; 900 Ninth Street, Suite 300; Sacramento, California 95814; and by Faxing above documents to Commission at [916] 445-0278.

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of March, 2006 at Los Angeles, California.


Hasmik Yaghobyan